Cahoy Dec.
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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION
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IN RE: DA VINCI SURGICAL ROBOT ANTITRUST LITIGATION, Case No. 3:21-cv-03825-VC
THIS DOCUMENT RELATES TO: ALL CASES
_____/

SURGICAL INSTRUMENT SERVICE COMPANY, INC.,

Plaintiff,

vs. Case No. 3:21-cv-03496-VC

INTUITIVE SURGICAL, INC.,

Defendant.
_____/

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VIDEO-RECORDED DEPOSITION OF DISHA PESWANI
VERITEXT VIRTUAL
THURSDAY, OCTOBER 6, 2022

Reported by:
Anrae Wimberley, CSR No. 7778
Job No. 5507105

Q. And you believed in June 2019 that certain 8-millimeter instruments might be able to be able to use -- to be able to withstand more uses; is that right?

MS. CAHOY: Objection to form.

THE WITNESS: So based on -- based on like the reliability data from the field and based on like design improvements that were made on 8-millimeter Xi instruments over a number of years, there was a hypothesis that some of our 8-millimeter Xi instruments might be able to withstand more lives and therefore, the program to really test that hypothesis.

BY MR. GLUBIAK:

Q. And so the next line just underneath that reads, "This project will determine how many lives can be supported through testing."

Do you see that?

A. Yes, I see that.

Q. And "testing" here refers to life testing; is that right?

MS. CAHOY: Objection to form.

THE WITNESS: So it refers to the testing that was on the top level test plan, but the number of lives -- one of the testing that is used for

A. Yes. As a project manager, I do prepare these slides, with inputs from other core team members.

Q. On the bottom left corner, do you see where it says "Methodology"?

A. Yeah, I see that section.

Q. And do you see the first bullet point, which reads, "Test existing designs to support increased lives"?

A. Yes, I see that.

Q. Is it correct that Intuitive did not make design changes before testing the first wave of EndoWrist for the instrument life extension project?

MS. CAHOY: Objection to form.

THE WITNESS: No. As I said, there were multiple other MCF forms that were driving design changes, and that -- those design changes were used to test this increased -- to support these increased lives testing.

BY MR. GLUBIAK:

Q. And which design changes are you referring to in that answer?

A. So in the candidate instruments, the first one, for example, large needle driver, we had an MCF project where we were changing the cable, the cable

material or process.

So that was one design change that was linking into, like, this instrument lives. That is one example of a design change.

Q. And was that change sometimes referred to as the "electro-polish cable"?

A. Yes, electro-polish cable is what I was talking about.

Q. Are there any other changes -- any other design changes that you're referring to when you say that there were design changes as part of the instrument life extension project?

A. Yeah, there were other design changes, in general, to improve reliability of instruments.

So Cadiere had one design change on grips, so, you know, most -- some of these instruments did have some changes on some components before we were able to test them for increased lives.

Q. And how was the grip changed on the Cadiere?

MS. CAHOY: Objection to form.

THE WITNESS: I don't recall the exact specifics of, like, what the grip change was. I remember that -- what I recall is there was an MCF for grip improvement. So I don't really remember

the specifics of, like, from a design perspective what were the improvements made.

BY MR. GLUBIAK:

Q. Are there any other design changes you can think of as part of the instrument life extension project?

A. I recall that on MSCND, mega suture cut needle driver, there was a design change on that instrument as well.

Q. Do you know what that change was?

A. It was on pitch cable. That's all I remember, but, again, not the specifics.

(Reporter seeks clarification.)

A. Yeah, pitch, p-i-t-c-h.

Q. Any other design changes as part of the instrument life extension project?

MS. CAHOY: Objection to form.

THE WITNESS: There -- as I said, over a number of years, there were multiple design changes made on this group of instruments.

The ones that I'm pointing at were directly related to, like -- you know, they were interdependent to those projects. But over a number of years, there were multiple design improvements made.

BY MR. GLUBIAK:

Q. And are there any other design improvements that were interrelated or interlinked with the instrument life extension project that you can think of sitting here today?

A. Yeah, I cannot think of, like, a particular one. But, as I said, over a number of years, you know, we made changes on cables, on, you know, pitch cable, grip cable, on grips.

Like, there were changes that were -- just happened year over year, and those were related to improving the product over time in the field, based on field responses.

Q. But there are no other specific examples you can think of today?

MS. CAHOY: Objection to form.

THE WITNESS: No. I mean, there are multiple ones that I recall, but not -- I can't think of anything that would directly relate to this instrument lives. That would be something like a design engineering would be able to answer, but I don't recall of any projects top of my head.

BY MR. GLUBIAK:

Q. And who specifically within design engineering are you thinking of?

THE WITNESS: So the bottom -- the second and the third bullet points are basically saying that the changes made as part of this MCF are not major enough to cross the threshold to major CAF and the design history files are transferable to the new base part number.

So as I was saying, introducing of new documentation is minimized. And that is what that is being explained in the second bullet point, that the entire design history is transferable from the parent part number to the new base part number; therefore, the case that we can operate under moderate change form is the justification used.

(Reporter seeks clarification.)

Q. And what you are referring to there is the part of the second bullet point that says [as read], ". . . the entire design history is transferable from the parent part number to a new base part number"; is that right?

A. Yes, that's what this second bullet point says.

And as I was describing, our CAF process, it's not the -- you know, it's not just the design change, but if you're introducing new documents and, you know, the design is completely changing of a

product, that falls under CAF.

In this case, in this particular MCF-19-004 case, where we were extending the life of IS4000 instruments, we were able to maintain most of the design history file. There were some design changes, but they were not crossing the threshold of, like, going to a major change.

Q. And so as it says in that bullet point, there were no changes to the product design; is that right?

MS. CAHOY: Objection to form.

THE WITNESS: So this bullet point says since there is no change to the product design, the entire design history is transferable from the context of major change.

So there -- as I said, there were -- and you looked in my agenda, you know, one of the exhibits, electro-polish LND was a design change which was needed to get the instrument life extended on LND.

So as part of this MCF -- this was an overarching MCF, but there were child MCFs, which were doing design changes, which were feeding into this overarching MCF.

BY MR. Van HOVEN:

Q. But none of those changes to product design were so significant that this had to be classified as a major change; right?

MS. CAHOY: Objection to form.

THE WITNESS: So per our procedure, you know, we have to follow our procedures when we state major change and moderate change. In the procedures, we don't define significant versus not significant design changes, right?

So it's based on the procedure and the judgment of cross-functional. If it crosses the threshold to invest in resources to do a CAF project, if it's possible to do it as an MCF, which was the moderate change form, you can justify it to do that.

BY MR. Van HOVEN:

Q. But here, they said there's no change in the product design; correct?

MS. CAHOY: Objection to form.

THE WITNESS: This is for MCF-19-004, which is the overarching MCF.

This particular MCF is talking about in context of major change. It's in Section 4, right? So as part of Section 4, it is justifying that we are maintaining our design history file, we are able

to transport most of the documents, and, therefore, we can stay within the moderate change boundaries.

BY MR. Van HOVEN:

Q. And the justification is that, as it states, quote, there is no change to the product design; correct?

A. That is not true. As I said, there were child MCFs, like EP LND, like Cadiere design changes, and MSCND pitch cable changes. So there were design changes which were child into this overarching MCF.

Q. So you disagreed that there was no change in the product design as stated in Section 4?

MS. CAHOY: Objection to form.

THE WITNESS: What I'm stating is in order to launch extended use program for the listed IS4000 instruments, there were product design changes. We couldn't get there without making those design changes.

BY MR. Van HOVEN:

Q. And I'm asking that with that understanding, do you disagree with the statement that there is no change to the product design in Section 4 of MCF-19-004?

MS. CAHOY: Objection to form.

THE WITNESS: As I said, there were product design changes to launch this program, and this is in context of the design history file.

BY MR. Van HOVEN:

Q. Do you know who redlined this document?

A. Per this e-mail on 60885, Tim Limon was -- had taken the lead to redline the document and he was circulating it for prereview. So this is -- this may not be the released version.

(Reporter seeks clarification.)

Q. So you believe that it's Tim Limon who wrote in Section 4 that there is no change to the product design; is that right?

MS. CAHOY: Objection to form.

THE WITNESS: I don't know who specifically wrote that bullet point, but what I'm saying is, Tim was circulating this redline, so he had taken the lead and may have received inputs from other functions.

BY MR. Van HOVEN:

Q. And do you understand that another rationale for categorizing that -- a major change as a moderate change was there is no change in the intended use from that bullet point?

A. Yeah. The last bullet point says that we

I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

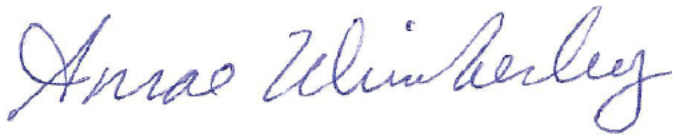
That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were administered an oath; that a record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; that the foregoing transcript is a true record of the testimony given.

Further, that if the foregoing pertains to the original transcript of a deposition in a Federal Case, before completion of the proceedings, review of the transcript ( ) was (X) was not requested.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any party to this action.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: October 17, 2022



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